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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

**BRIAN KEHLER**

**Plaintiff,**

**v.**

**Case Number 15-CV-127-J**

**BRIDGESTONE AMERICAS TIRE  
OPERATIONS, LLC, COMMERCIAL  
TIRE, INC., and JOHN DOE  
CORPORATIONS/ENTITIES 1-3**

**Defendants.**

**PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE REFERENCE TO, ARGUMENT  
RELATED TO, OR SUGGESTION THAT THE FAILURE OF THE SUBJECT TIRE WAS  
CAUSED BY ROAD HAZARD**

Plaintiff, Brian Kehler, by and through his undersigned attorneys of record, hereby submits the following Motion In Limine to Exclude any reference to, argument related to, or

suggestion that the failure of the subject tire was caused by a road hazard. In support thereof, Plaintiff states as follows:

**CERTIFICATION OF U.S.D.C.L.R. 7.1(b)(1)(A) CONFERRAL**

Plaintiff's counsel hereby certifies that pursuant with U.S.D.C.L.R Rule 15.1, the Plaintiff has conferred with Defendants on the following matter. The Defendants object to this motion.

**NO EVIDENCE EXISTS OF ANY ROAD HAZARD CAUSING DAMAGE TO  
THE SUBJECT BRIDGESTONE R283 PRIOR TO ITS FAILURE**

1. No evidence exists in this case of any phantom road hazard. Such testimony is based on pure speculation, and there is no foundation to support testimony.

2. Defendants intend to offer testimony through its experts that there was some unknown type of pre-accident road hazard at an unknown time causing unknown damage to the tire. But despite these unknowns, the experts intend to testify that this phantom road hazard is a cause of the failure of the subject tire. Such testimony is based on pure speculation, and should be precluded from trial.

3. The Defendants offer no justification to support this contention. The subject tire, when examined, showed no road hazard. Defendants attempt to create such a phantom road hazard, without any evidence to substantiate such occurrence, is misleading for the jury, causes confusion, and is prejudicial to the Plaintiff. F.R.E. 403

4. Defendants, defense counsel and defendants' experts should not be permitted to make arguments or allegations that have no factual foundation. Rule 401; Rule of Professional

Conduct 3.1(a) (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous”); Rule of Professional Conduct 3.4 (“A lawyer shall not... (e) in trial, allude to any matter that... will not be supported by admissible evidence”).

5. The Defendants can offer no evidence to prove that this phantom road hazard occurred at any time, and there is no evidence of a road hazard in the tire itself.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court preclude the Defendants and Defendants’ experts from arguing or alleging that a road hazard existed that was a cause of the failure of the Bridgestone tire.

Dated this 18<sup>th</sup> day of November, 2016.

*/s/ Diana Rhodes*

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that the foregoing document was filed via CM/ECF and I served a true and correct copy of same upon the entity or entities named below via CM/ECF on this 18th day of November, 2016.

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*/s/ Diana Rhodes*

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